IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1211 OF 2005

M/s.Ocean Creations & Ors. ..Petitioners.

Vs.

Nandlal Nirmal & Ors. ..Respondents.

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Mr.K.S.Bapat for the Petitioners.

Mr.Rajesh Gehani for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

5th May, 2005.

P.C. :

The Labour Court has on a reference to adjudication under Section 10 of the Industrial Disputes Act, 1947 granted reinstatement with continuity of service and half the backwages with effect from 25th July, 1997.

The workman was in employment for a period of 8 years as a pressman with the Petitioner. His case was that on 25th July, 1997 his services were terminated without complying with

the mandatory requirements of law. The workman raised a demand on 28th July, 1997 immediately after the termination by a letter which was forwarded to the management by registered post. Admittedly, there was no reply thereto. This assumes importance because the contention of the management was that there was no termination of services in the first place and it was the worker who had abandoned services. This defence of the management is belied by the contemporaneous conduct of the workman in immediately seeking reinstatement and to which there was no reply by the management. The Labour Court has also noted that before the conciliation officer the management chose not to appear and the report of conciliation shows that the management had remained absent. The report of the conciliation officer has been produced before this Court also and it is clear therefrom that the management had not appeared during the course of the conciliation proceedings. It may be noted that in the written statement which was filed by the management it was averred in paragraph 1(a) and paragraph 3(a) that the management had sent messages to the workman through his co-employees to report for work. In the course of the

examination-in-chief of the management's workman, however, the witness stated that he did not remember the name of the person through whom the message was sent. On a review of the evidence, the Labour Court has held that no case of the abandonment of service has been established. On the contrary, the evidence showed that there was an illegal termination of service. These findings are based on the evidence on the record. Counsel appearing for the management, however, urged that the workman ought to have reported for duty after the written statement was filed in the year 2000 in which an offer was made by the management to take the workman on duty without prejudice to its contentions in the written statement. The Labour Court has reduced the quantum of backwages to 50%. However, having regard to all the facts and circumstances of the case including the submissions which have been urged on behalf of the management, I am of the view that it would be appropriate if the quantum of backwages is restricted to 25%. Fairly, counsel appearing for the workman has not opposed to this reduction. In the circumstances, this Petition is disposed of, confirming the order of reinstatement with continuity of service, with

the direction that the workman will be entitled to 25% of his backwages.